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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re James R., et al., Persons Coming Under the Juvenile Court Law.	
SAN MATEO COUNTY HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. MARIA R., Defendant and Appellant.	A124537 (San Mateo County Super. Ct. Nos. 77461, 77462)

This appeal has been taken by the mother from a judgment pursuant to Welfare and Institutions Code section 366.26 that terminated her parental rights and ordered adoption as the permanent plan for her two minor children, James and Nicholas.[1] She claims the trial court erred by failing to find that two statutorily recognized exceptions to adoption were established by the evidence presented: the beneficial parental relationship exception (§ 366.26, subd. (c)(1)(B)(i)) and the sibling relationship exception (§ 366.26, subd. (c)(1)(B)(v)). We conclude that the evidence supports the trial court's findings that the exceptions do not apply, and affirm the judgment.

[1] All further statutory references are to the Welfare and Institutions Code.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The minors James and Nicholas are the children of the mother Maria and Jaime.[2] Maria is also the mother of two older children, Tiffany and Carla, who are the half-siblings of James and Nicholas.

Maria and the father of Tiffany and Carla, Juan, have been engaged in an "active custody case" since 2003. Juan was granted custody of Tiffany and Carla in June of 2003, whereupon he and his family became the primary caretakers of the girls. Thereafter ensued a protracted acrimonious custody conflict between them marked by numerous complaints, dependency referrals, hearings, mutual restraining orders and violations, contentious disputes and considerable animosity. Ultimately, Juan and others in his family obtained restraining orders that prohibited Maria from visiting or calling his home or contacting Tiffany and Carla at school.

This dependency proceeding commenced in August of 2007, when a petition followed by an amended petition were filed (§ 300, subd. (b)), which alleged failure to protect the minors James and Nicholas due to a history of domestic violence by the parents in the home, Maria's anger and inappropriate physical discipline of the children, the mother's numerous altercations with Juan and his relatives, among others, the father's alcohol abuse and repeated inebriation in front of the children, the disorderliness in the home, and the poor hygiene of the children.

Tiffany and Carla were also the subjects of a separate dependency petition.[3] All of the children were ordered detained, and the jurisdictional hearings on the two petitions were held concurrently on October 12, 2007.

The jurisdictional and dispositional reports recited the extensive child welfare history related to the minors and their parents. Child Protective Services received a total

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[2] For the sake of confidentiality we will use the first names only of the parents and the minors. We will also refer to Maria as the mother. James and Nicholas were born in November of 2004 and November of 2006, respectively.

[3] The petition relating to Tiffany and Carla was dismissed in March of 2005, and is not at issue in this appeal.

of 55 referrals between 2001 and July of 2007, that related to Tiffany and Carla; five more referrals involving James and Nicholas occurred between August of 2005 and August of 2007, the last two of which resulted in the amended petition. Both Maria and Jaime have significant, lengthy criminal histories. Jaime has nine felony convictions for firearm, battery, alcohol, drug, public drunkenness, domestic violence, and disorderly conduct offenses, and was incarcerated in state prison. He was also listed as a known Norteno gang member who has threatened to kill himself and Maria, has been injured in fights, is afflicted with "serious substance abuse," and is homeless and "unable to care for himself" when not incarcerated. Maria has suffered convictions for theft, violation of court orders, taking a vehicle without the owner's consent, and other offenses, for which she has intermittently been in custody in county jail or placed on probation. Jaime and Maria have a "history of domestic violence" that has included repeated instances of physical abuse.

Mental health evaluations of Maria indicated that she is consumed by "fits of anger," and engages in abusive, confrontational, erratic, impulsive behavior that she cannot control. She was diagnosed with depressive disorder and personality disorder with obsessive-compulsive personality traits that interfere with her ability to care for the children, create constant turmoil, and place them at risk of harm.

James and Nicholas were placed in their foster home, where they were reportedly receiving "excellent care" and adapting well. Mental health assessments of the children revealed that the "turmoil and angry outbursts" to which they were previously exposed in the parents' home had a "negative impact" on their development of social skills. James was reported to have "bursts of aggression" and "difficulty with sleep," which are more acute after visits with Maria. The report indicated that both of the minors were improving and "doing well in their nurturing foster home."

Following the dispositional hearing the minors were found to be dependent children and removed from the parents' custody. James and Nicholas continued to be placed in their foster home. Reunification services were ordered for Maria, and she was granted supervised visitation with the minors.

Throughout the course of the interim and six-month review hearings from November 9, 2007, to July 15, 2008, Maria maintained regular supervised visitation with the minors, and was cooperative with the visitation schedule, but did not make progress with her mental health issues or satisfactorily comply with her reunification plan. She continued to demonstrate rude, hostile and erratic behavior. She repeatedly harassed Juan and his family members, in violation of the restraining order issued against her. Juan stated to the social worker that he wanted to avoid further contact with Maria due to her enduring hostility towards him and his family for the past five years, although he agreed to continue to be cooperative with her visitation with Tiffany and Carla.

The social worker and the CORA case manager noted that Maria was verbally aggressive and "out of control" during an assessment interview on May 15, 2008. She was also unreasonably argumentative during "chaotic" visits with the children on several occasions. During one visit on May 28, 2008, the family care supervisor indicated that Maria "inappropriately engaged in a heated argument" with Carla. When the supervisor announced the conclusion of the visiting session, Maria grabbed the children and locked them in a bedroom with her, which caused the children to cry and yell, and resulted in a call to the Millbrae Police Department. Maria remained "combative" when the police arrived. James was reported to be "traumatized" by the incident.

The social worker reported that communication with Maria was difficult due to her unpredictable mood swings and periodic strident expressions of anger. A mental health evaluation and mental health treatment of Maria was recommended as imperative, as was medication to alleviate her symptoms of anger, anxiety and inability to focus. Maria consistently participated with Nicholas in weekly family therapy, but declined to take medication recommended to address her anger and negative impulses. Maria's commitment to mental health treatment was characterized by therapist Marie Clemente as "questionable at best," and despite her excellent attendance she was "not benefitting" from family therapy. Her "hostile personality" and "conflictual relationships" with others had not improved.

An addendum to the report for the six-month review hearing recommended termination of reunification services. At the six-month review hearing on July 15, 2008, a finding was made that Maria made no progress in alleviating the causes that necessitated the dependency, but the court also found that reasonable services had not been provided to her and extended reunification services to October 16, 2008.

The 12-month review report indicated that Maria was unemployed and homeless.[4] She had also been placed on probation for five years and ordered to complete a Sheriff's Work Furlough Program for violation of the restraining order that prohibited contact with Juan.

Maria continued to maintain regular and "cooperative" weekly visitation with the children, although she was often late for the scheduled visits. The social worker stated that "the children look forward to their visitation with their mother." James was typically excited to greet his mother, and Maria appeared to focus upon him, but they did not continue to interrelate closely during the entirety of the visits. Their interaction had "a short span." Often, James and Nicholas played independently during visits without input from Maria. Nicholas seemed more disconnected from his mother during the visits, and neither involved her in his play nor consistently sought attention from her. Maria made brief efforts to engage in activities with Nicholas, but frequently appeared distracted and emotionally distant from him.

The minors continued to reside with the foster parents, and engaged in new, positive patterns of behavior. The foster parents developed a strong attachment to James and Nicholas, but by the date of the 12-month review hearing they were "unable to make a commitment to adopt the children." The maternal aunt of the minors expressed an "active interest" in adopting the minors, with caretaking assistance from the maternal grandmother, and was approved as a possible placement for them. By September of 2008, however, Maria's hostile and "unpredictable behavior" caused the maternal aunt

[4] She was residing with the maternal grandmother in South San Francisco. The father remained incarcerated for violation of a restraining order.

and grandmother to become fearful of placement of the minors with them. Maria repeatedly engaged in acts of trespassing, screaming, and harassment directed at the maternal aunt, which included hitting her car. In December of 2008, the maternal aunt obtained a restraining order against Maria, but due to the inability to control Maria's behavior she asked "not [to] be considered as a relative placement" for the minors.

Maria's commitment to therapy remained "questionable." She denied any mental health issues despite her persistent fits of anger and erratic behavior which continued to compromise her ability to parent the minors. As a result, she failed to benefit from the therapy provided to her. The therapist therefore recommended termination of the family treatment plan. As a result of Maria's failure to improve her "hostile personality" and "conflictual relationships" with those around her, the social worker described her interaction with the minors as "inappropriate and unhealthy."

At the conclusion of the 12-month review hearing on December 18, 2008, reunification services to Maria were terminated and the case was set for a section 366.26 hearing. Supervised visitation was modified from weekly to monthly.

The section 366.26 hearing was held on April 7, 2009. Maria visited with the children only once following the termination of reunification services. In February of 2009, she spent two weeks in the Women's Facility in Redwood City for failure to complete the Sheriff's Work Furlough Program as ordered.

The report for the section 366.26 hearing noted that the children continued to improve their behavioral and social skills in the care of the foster parents. They formed strong, affectionate bonds with each other and the foster parents in the two years of their placement with them. They were also reported to be "doing extremely well" with their ongoing weekly family therapy. The foster parents considered the children to be "full members of their family." With the termination of reunification services to Maria, the foster parents expressed to the social worker "that they are firmly committed to adopting James and Nicholas." The report recommended termination of parental rights and selection of adoption as the permanent plan for the minors.

At the hearing, social worker Rita Lopez testified that in the last year Maria consistently engaged in weekly visits with the children. During visits she properly focused on the children, expressed love, and interacted appropriately with them. Typically, Maria engaged in play with James during visits, while Nicholas "played apart" from them on another side of the room and declined his mother's requests to join him. Lopez mentioned that the maternal aunt and grandmother of the minors had been considered for permanent placement, but declined to do so due to their inability to "control the mother's behavior."

Lopez also offered testimony on the subject of the minors' relationship with their half-siblings Tiffany and Carla. James and Nicholas visited their half-siblings during the last two years, but never resided with them. In the last year, the minors visited with their half-siblings on only one occasion in October of 2008, due to their father's opposition to visitation once the girls' dependency proceeding ended without any sibling visitation order. James mentioned to his therapist, his mother and the social worker that he "wanted to see his older siblings Tiffany and Carla." Nicholas never made a request to visit his half-siblings. The social worker testified that "James and Carla like each other" and played together during visits, but Nicholas did not have any relationship with Carla. The foster parents indicated to the social worker that they would attempt to facilitate visits with the half-siblings following an adoption.

Maria testified at the hearing that during the last visit with the children James expressed that "he wants to come home" and "misses Tiffany and Carla." She asserted that Nicholas is "attached" to her and did not "want to leave" when their visits ended. She also asserted that James and Nicholas have "tight bonds" and "loving relationships" with their half-siblings Tiffany and Carla. According to Maria, beginning in 2006, and continuing until the dependency proceedings commenced, James and Nicholas visited often with their half-siblings, and they "grew up" together. She thought her weekly visits with the children during the course of the dependency were positive. Maria mentioned that she wanted to instill "Mexican-American" heritage and "family values" in the

children. She insisted that she loves her children "very much," and is neither a drug addict nor "mentally unstable."

At the conclusion of the hearing the trial court found clear and convincing evidence that the minors are adoptable and termination of their relationship with Maria would not be detrimental to them. The court further found that the sibling relationship of the minors with Tiffany and Carla will not suffer "a substantial interference" upon termination of parental rights. The court therefore terminated parental rights and ordered adoption as the permanent plan for the minors.[5] This appeal followed.

DISCUSSION

The mother argues that the trial court erred by terminating parental rights and finding that the children are adoptable. Her position is that two statutory exceptions to adoption are established by the evidence in the present case, and precluded termination of parental rights: the beneficial parental relationship exception, and the sibling relationship exception. She therefore requests that we reverse the judgment that terminated her parental rights and remand the case to the juvenile court for a "new section 366.26 hearing."

Where, as here, "reunification efforts have failed and the child is adoptable, the court must select adoption unless it finds terminating parental rights would be detrimental to the child under at least one of five statutory exceptions. (§ 366.26, subd. (c)(1)(A)-(E); see also *In re Erik P.* (2002) 104 Cal.App.4th 395, 401 [127 Cal.Rptr.2d 922]; *In re Derek W.* (1999) 73 Cal.App.4th 823, 826 [86 Cal.Rptr.2d 739].)" (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 228.) "Once reunification services are ordered terminated, the focus shifts to the needs of dependent children for permanency and stability. [Citation.] A section 366.26 hearing is designed to protect these children's compelling rights to have a placement that is stable, permanent, and allows the caretaker to make a full emotional commitment to the child. [Citation.] If, as in this case, the children are

[5] Mediation between Juan and the adoptive parents to arrange sibling visitation was ordered.

likely to be adopted, adoption is the norm. Further, the court must terminate parental rights and order adoption, unless one of the specified circumstances in section 366.26, subdivision (c)(1), provides a compelling reason for finding that termination of parental rights would be detrimental to the child. [Citation.] 'The specified statutory circumstances — actually, *exceptions* to the general rule that the court must choose adoption where possible — "must be considered in view of the legislative preference for adoption when reunification efforts have failed." [Citation.] At this stage of the dependency proceedings, "it becomes inimical to the interests of the minor to heavily burden efforts to place the child in a permanent alternative home." [Citation.] The statutory exceptions merely permit the court, in *exceptional circumstances* [citations], to choose an option other than the norm, which remains adoption.' [Citation.]" (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1320.)

Two statutory exceptions are implicated in the present case: "(1) where a *parent* has maintained regular visitation and contact with a child who would benefit from continuing that relationship (§ 366.26, subd. (c)(1)(B)(i)); [and] (2) where termination would interfere substantially with a child's *sibling* relationship, taking into account a number of factors (§ 366.26, subd. (c)(1)(B)(v)) . . . ." (*In re A.A.*, *supra*, 167 Cal.App.4th 1292, 1324.)

I. The Standard of Review.

Maria devotes some attention to the standard that governs our review of the trial court's decision. She maintains that "substantial evidence standard of review" is appropriate, not the more deferential "abuse of discretion standard." We undertake a review that is quite constrained and includes elements of both standards.

"With respect to challenged factual findings, we will affirm 'if there is any *substantial* evidence to support the trial court's findings,' i.e., 'if the evidence is reasonable, credible and of solid value – such that a reasonable trier of fact could find that termination of parental rights is appropriate based on clear and convincing evidence.' [Citations.]" (*In re Baby Girl M*. (2006) 135 Cal.App.4th 1528, 1536.) "Although a trial court must make such findings based on clear and convincing evidence [citation], this

standard of proof ' "is for the guidance of the trial court only; on review, our function is limited to a determination whether substantial evidence exists to support the conclusions reached by the trial court in utilizing the appropriate standard." ' [Citation.] Under the substantial evidence standard of review, ' "[a]ll conflicts in the evidence must be resolved in favor of the respondents and all legitimate and reasonable inferences must be indulged in to uphold the judgment." ' [Citation.]" (*Adoption of Allison C.* (2008) 164 Cal.App.4th 1004, 1010–1011, fn. omitted; see also *In re Amy A.* (2005) 132 Cal.App.4th 63, 67.)

Also, the decision to terminate parental rights lies in the first instance within the discretion of the trial court, "and will not be disturbed on appeal absent an abuse of that discretion. [Citation.] While the abuse of discretion standard gives the court substantial latitude, '[t]he scope of discretion always resides in the particular law being applied, i.e., in the "legal principles governing the subject of [the] action . . . ." ' [Citation.] 'Action that transgresses the confines of the applicable principles of law is outside the scope of discretion and we call such action an "abuse" of discretion.' [Citation.]" (*In re Baby Girl M., supra,* 135 Cal.App.4th 1528, 1536.) " ' " 'When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.' " [Citations.]' [Citation.] The abuse of discretion standard warrants that we apply a very high degree of deference to the decision of the juvenile court." (*In re J.N.* (2006) 138 Cal.App.4th 450, 459.)

II. The Beneficial Parental Relationship Exception.

We first examine the exception specified in section 366.26, subdivision (c)(1)(B)(i)), which is recognized where the parent has "maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (See also *Sheri T. v. Superior Court* (2008) 166 Cal.App.4th 334, 339–340; *In re S.B.* (2008) 164 Cal.App.4th 289, 297.) Maria asserts that she "maintained regular visitation" with the children on a consistent and appropriate basis during the entire course of the dependency proceedings. She also claims that the minors, particularly James, sustained a strong, unwavering, beneficial attachment to her "throughout the dependency," as

demonstrated by the excitement they manifested upon visiting her and the disappointment they exhibited when she left. She therefore argues that the "children would benefit from the continued relationship" with her, and "would suffer detriment" if her parental rights are terminated.

"The parent contesting the termination of parental rights bears the burden of showing both regular visitation and contact and the benefit to the child in maintaining the parent-child relationship." (*In re Helen W.* (2007) 150 Cal.App.4th 71, 80–81.) The language " ' "benefit from continuing the . . . relationship" ' " has been interpreted "to mean 'the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.' " (*In re S.B., supra,* 164 Cal.App.4th 289, 297, quoting from *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.)

To determine if the beneficial parental relationship exception applies, " 'the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated.' [Citation.]" (*In re S.B., supra*, 164 Cal.App.4th 289, 297.) "[I]f an adoptable child will not suffer great detriment by terminating parental rights, the court must select adoption as the permanency plan." (*In re Dakota H., supra,* 132 Cal.App.4th 212, 229.) "No one factor controls the court's analysis. It is a balancing test." (*Id.* at p. 231.)

While we have no dispute with the mother's contention that she maintained both regular visitation and a favorable bond with the children, that does not suffice to establish the parental relationship exception under section 366.26, subdivision (c)(1)(B)(i)). "[I]nteraction between parent and child will always confer some incidental benefit to the child. [Citation.] To meet the burden of proof, the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant visits. [Citation.] The parent must demonstrate more than incidental benefit to the child. In order to overcome

the statutory preference for adoption, the parent must prove he or she occupies a parental role in the child's life, resulting in a significant, positive emotional attachment of the child to the parent." (*In re Dakota H., supra*, 132 Cal.App.4th 212, 229; see also *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1007.)

We agree with the trial court that the minors' relationship with their mother was outweighed by their need for the stability, security and benefit provided by their prospective adoptive home. Although Maria continued to visit with the minors, she did not effectively address the issues related to her anger and uncontrolled conduct that resulted in the dependency in the first place. She continued to violate restraining orders and engage in harassment of her sister, grandmother, and the father of her two older children. Even a few of her visits with James and Nicholas were marked by conflicts and disputes that unsettled the children. As we view the evidence, the minors acquired a bond at least as strong and loving with their foster parents, who during the past two years of the dependency not only interacted with them on a daily, parental level, but also developed a full emotional attachment and commitment to them. The evidence uniformly established that the emotional state and behavior of the children improved dramatically with the very competent care provided for them by the foster parents. Although the children would undoubtedly continue to derive some benefit from continued visitation with Maria, their long-term needs would not be met by some form of nonpermanent placement. We find no abuse of discretion in the trial court's finding that the minors' need for a safe, stable and permanent home outweighed the benefit they would derive from a continued relationship with Maria. (*In re Dakota H.*, *supra*, 132 Cal.App.4th 212, 231.)

III. The Sibling Relationship Exception.

We turn our attention to the sibling relationship exception, which "requires that a court not order the termination of parental rights where the evidence shows that such termination would substantially interfere with a sibling relationship, and the preservation of such relationship outweighs the benefit the child would receive from adoption into a permanent home." (*In re Valerie A.* (2006) 139 Cal.App.4th 1519, 1523.) Maria asserts

that James and Nicholas "grew up with their sisters" Tiffany and Carla, then had "significant contact" with them after the dependency actions commenced, sometimes in the nature of overnight visits. She adds that the minors "shared significant common experiences" with their half-siblings, "and that there was a strong sibling bond" with them, as demonstrated by James' requests to see them, even "six months after their last visit" together. Maria therefore complains that ongoing contact with the minors' siblings was "in their best interests," and adoption would "substantially interfere" with the relationship to the detriment of the minors.

" '[T]he "sibling relationship exception contains strong language creating a heavy burden for the party opposing adoption. It only applies when the juvenile court determines that there is a 'compelling reason' for concluding that the termination of parental rights would be 'detrimental' to the child due to 'substantial interference' with a sibling relationship." [Citations.] . . .' [Citation.]" (*In re Naomi P.* (2005) 132 Cal.App.4th 808, 823.) To " 'show a substantial interference with a sibling relationship the parent must show the existence of a significant sibling relationship, the severance of which would be detrimental to the child.' [Citation.]" (*In re Daisy D.* (2006) 144 Cal.App.4th 287, 293.) To determine the nature and extent of the sibling relationship, "the juvenile court must take into consideration whether the siblings were raised in the same home, whether they shared significant common experiences or had close and strong bonds, and whether ongoing contact outweighs the child's interest in the benefit of legal permanence through adoption. [Citation.] The focus is on the best interests of the child being considered for adoption, not on the interests of the child's siblings." (*In re I.I.* (2008) 168 Cal.App.4th 857, 872; see also *In re Valerie A., supra,* 152 Cal.App.4th 987, 1007–1008.) "[E]ven if adoption would interfere with a strong sibling relationship, the court must nevertheless weigh the benefit to the child of continuing the sibling relationship against the benefit the child would receive by gaining a permanent home through adoption." (*In re Celine R.* (2003) 31 Cal.4th 45, 61.) "The parent bears the burden of proving both the existence of the sibling relationship and that its severance

would be detrimental to the child." (*In re Valerie A., supra,* 139 Cal.App.4th 1519, 1523.)

Although the minors remained in contact with their siblings Tiffany and Carla, substantial evidence supports the finding that the relationship was not of sufficient magnitude to invoke the exception. The half-siblings began residing with their father when Maria was incarcerated in May of 2003, so the minors have not shared a home with them. The record discloses that the experiences shared by the minors and their half-siblings during visits with the mother were neither extensive nor intimate in nature. (Cf. *In re Celine R., supra,* 31 Cal.4th 45, 61; *In re Naomi P., supra,* 132 Cal.App.4th 808, 824.) At most, the children were infrequent playmates. In the past year, the minors visited with their half-siblings on only one occasion in October of 2008. The fact that James clearly enjoyed the time he spent with his half-siblings, particularly Carla, during visitation, and expressed a wish to see them, does not present a convincing reason to forego the stability and permanence of adoption by caretakers to whom the minors were closely bonded. (*In re Daisy D., supra,* 144 Cal.App.4th 287, 293.) Finally, the foster parents indicated a willingness to facilitate sibling contact following adoption. The juvenile court did not err by declining to find that the sibling relationship furnished a compelling reason to preclude adoption. (*In re I.I., supra,* 168 Cal.App.4th 857, 873.)

Accordingly, the judgment is affirmed.

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Dondero, J.

We concur:

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Margulies, Acting P. J.

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Banke, J.